



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2012

Ms. Michele Tapia
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-16211

Dear Ms. Tapia:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 472679.

The City of Carrollton (the "city") received a request for an "apartment offense [and a]rrest list" for a specified time period. You state some of the requested information has been released. You claim other responsive information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by other statutes, including section 58.007 of the Family Code. Section 58.007 provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of Fam. Code title 3). You contend Exhibit B is confidential under section 58.007. We agree Exhibit B involves a juvenile offender and must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the release of the information you have marked in Exhibit C would interfere with a pending prosecution. Based on your representation, we conclude section 552.108(a)(1) is generally applicable to the marked information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state the information you have marked in Exhibits D and E is related to concluded investigations. Based on your representation, we conclude section 552.108(a)(2) is generally applicable to the marked information.

¹As we are able to make this determination, we need not address your other claims for Exhibit B.

We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle* and includes an identification and description of the complainant. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, you seek to withhold the identities of the complainants in Exhibits C, D, and E under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Section 552.101 also encompasses the informer's privilege, which Texas courts have long recognized. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." See Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. See Open Records Decision No. 549 at 5 (1990).

We note the offender in Exhibit C knows the complainant's identity. Therefore, the identity of the complainant in Exhibit C may not be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and must be released to the requestor. Based on your representation that the complainants in Exhibits D and E reported alleged violations of provisions of the Penal Code, we conclude the city may withhold the information you have marked in Exhibits D and E that identifies the complainants under section 552.101 in conjunction with the informer's privilege.

We also note basic information under section 552.108(c) includes a detailed description of the offense, which must be released even if the information does not literally appear on the front page of an offense or arrest report. See 531 S.W.2d at 186-88; ORD 127 at 3-4. Thus, the city must release detailed descriptions of the offenses from the information you have marked in Exhibits C, D, and E. The city may withhold the remaining information you have marked in Exhibit C under section 552.108(a)(1) of the Government Code and the remaining information you have marked in Exhibits D and E under section 552.108(a)(2) of the Government Code.

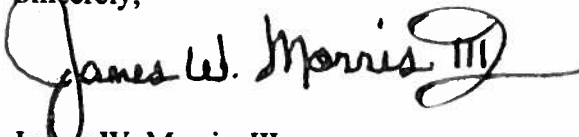
Lastly, section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country. See Gov't Code § 552.130(a)(2). The city must withhold the motor vehicle information you have marked and the additional information we have marked in Exhibit E under section 552.130.

In summary, the city (1) must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) may withhold the information you have marked in Exhibit C under section 552.108(a)(1) of the Government Code and the information you have marked in Exhibits D and E under section 552.108(a)(2) of the Government Code, except for detailed descriptions of the offenses, which must be released in accordance with section 552.108(c); (3) may withhold the information you have marked in Exhibits D and E that identifies the complainants under section 552.101 in conjunction with the common-law informer's privilege; and (4) must withhold the motor vehicle information you have marked and the additional information we have marked in Exhibit E under section 552.130 of the Government Code. The city must release the rest of the submitted information to the extent it has not already done so.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 472679

Enc: Submitted documents

c: Requestor
(w/o enclosures)